

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In The Matter Of:

**JEM CONTRACTING, INC.,
(U. S. DOT No. 1039402)**

Petitioner

**Docket No. FMCSA-2010-0023
(Western Service Center)**

DECISION ON PETITION FOR REVIEW OF SAFETY RATING

By letter dated November 10, 2009, JEM Contracting, Inc. (Petitioner) requested administrative review of a proposed unsatisfactory safety rating pursuant to 49 CFR 385.15.¹ The proposed rating was assigned following a compliance review of Petitioner completed on November 5, 2009. Shortly thereafter, the Federal Motor Carrier Safety Administration Montana Division Administrator upgraded Petitioner's rating to conditional by changing its accident rating factor from unsatisfactory to satisfactory. A revised compliance review dated November 25, 2009, was prepared reflecting this change.² On January 14, 2010, Petitioner resubmitted its November 10, 2009 petition which now requested administrative review of its new conditional rating.

The procedures for assigning a safety rating at the conclusion of a compliance review are set out in Appendix B to part 385. As pertinent, ratings are assigned for each

¹ This letter was not received by my office, although Petitioner claimed to have mailed it on November 10, 2009. An amended version of the letter was faxed to the Agency on January 14, 2010.

² Although Petitioner did not include a copy of either compliance review report with its petition, a copy of the November 25 report was obtained from the Federal Motor Carrier Safety Administration's Enforcement Document Management System and relevant portions of this report have been placed in the docket.

of six factors, if applicable. The ratings for these individual factors then determine a carrier's overall safety rating according to a Safety Rating Table.³

The ratings for factors one through five are assigned based on violations of acute regulations and patterns of noncompliance with critical regulations.⁴ A pattern of noncompliance with a critical regulation exists when the number of violations equals 10 percent or more of the instances examined.⁵ The rating for factor six, recordable accident rate, is determined by the number of recordable crashes per million vehicle miles traveled by the carrier.

A carrier is assessed one point for each violation of an acute regulation or each pattern of noncompliance with a critical regulation.⁶ The carrier will be rated unsatisfactory in a rating factor if the acute and/or critical violations for that factor total two or more points. It will be rated conditional in a factor if the acute and/or critical violations equal one point.⁷ Under the Safety Rating Table, an unsatisfactory rating in any single rating factor will result in an overall conditional rating, even if the carrier is rated satisfactory in all other applicable factors.

³ Appendix B to 49 CFR part 385, section III. A.(b).

⁴ These regulations are identified in Appendix B to 49 CFR part 385, section VII. However, the initial rating for the vehicle rating factor will be conditional if the carrier has a vehicle out of service rate exceeding 34% based on three or more roadside inspections during the 12 months preceding the compliance review.

⁵ To constitute a pattern, however, there must be more than one violation of a critical regulation. See Appendix B to 49 CFR part 385, section II.(g).

⁶ However, patterns of noncompliance with critical regulations in 49 CFR part 395 are assessed two points, in accordance with Appendix B to 49 CFR part 385, section II. (h).

⁷ Except as noted in Footnote 4.

Petitioner's conditional safety rating resulted from an unsatisfactory rating for rating factor three (operational). It was assessed two points for this factor based upon a pattern of noncompliance with critical regulation 49 CFR 395.8(e), false reports of records of duty status. Petitioner was also assessed one point for rating factor two (driver) based upon an alleged violation of acute regulation 49 CFR 391.11(b)(4)/391.11(a), using a physically unqualified driver. Consequently, it was rated conditional for this rating factor.

The amended petition for administrative review challenged only the alleged § 391.11(b)(4)/391.11(a) violation. However, for the sake of argument, if that violation was removed from the compliance review report, Petitioner's safety rating would remain conditional, based on its unsatisfactory rating for the operational factor, which Petitioner did not dispute. Accordingly, Petitioner's amended request for a satisfactory safety rating is denied.

It Is So Ordered.


Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

3.3.10
Date

CERTIFICATE OF SERVICE

This is to certify that on this 4 day of March, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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